

To: House Judiciary Committee

From: Amanda L. Stanley, General Counsel

Date: January 29, 2019

RE: Support for HB 2064

I want to thank Chairman Patton and the Committee members for allowing the League of Kansas Municipalities the opportunity to provide testimony in support of HB 2064.

Currently K.S.A. 8-2104 states "(a) When a person is stopped by a law enforcement officer for any violation of any provision of the uniform act regulating traffic on highways not amounting to a felony, the person shall be taken into custody and taken without unnecessary delay before a judge of the district court, as specified in subsection (d) of K.S.A. 8-2106, and amendments thereto, if: (1) Such person demands an immediate appearance before a judge; or (2) **such person is to be charged with a violation of K.S.A. 8-1567 and 8-1568, and amendments thereto.**" (emphasis added)

At issue here is what do the words "such person is to be charged with" mean. In *Stormont-Vail Healthcare, Inc., v The Board of County Commissioners for Jackson County, Kansas*, No. 117,650, 2018 WL 2170117 (Kan. Ct. App. May 11, 2018) the Kansas Court of Appeals found that K.S.A. 8-2104(a) was mandatory arrest statute, and thus, even though the officer did not arrest the offender, the offender was in custody because he should have been arrested triggering liability for medical expenses under K.S.A. 22-4612. Petition for review by the Kansas Supreme Court was denied and this decision has already been relied upon by other district courts to make similar decisions.

Law enforcement officers do not make charging decisions. If, as a matter of public policy, this statute is going to be a mandatory arrest statute, we ask the legislature clean up the wording to make it clear when a law enforcement officer must arrest by rewording K.S.A. 8-2104(a) to state:

"(a) When a person is stopped by a law enforcement officer for any violation of any provision of the uniform act regulating traffic on highways not amounting to a felony, the person shall be taken into custody and taken without unnecessary delay before a judge of the district court, as specified in K.S.A. 8-2106(d), and amendments thereto, if: (1) Such person demands an immediate appearance before

a judge; or (2) **the law enforcement officer believes there is sufficient evidence for such person to be charged with a violation of K.S.A. 8-1567 and 8-1568, and amendments thereto.**" (Emphasis added).

Additionally, in *Stormont* the Court appeared to interpret K.S.A. 8-2106 to mean it was a mandatory arrest statute if the offender was to be charged with either K.S.A. 8-1567 OR K.S.A. 8-1568. We strongly believe that AND should mean AND. We would like the legislative history to clearly state that K.S.A. 8-2106 is only a mandatory arrest statute if the officer believes there is sufficient evidence for the person to be charged with both offenses.

We would like to amend K.S.A. 8-2104(d) to replicate the new language in K.S.A. 8-2104(a)(2) for sake of consistency.

We respectfully ask this Committee to pass HB 2064 to the full House for consideration.